

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DENNIS EAST INTERNATIONAL, INC.,

Plaintiff

vs.

ATHOME AMERICA, INC.,

Defendant.

Civil Action No.

04 - 11994 RWZ

MAGISTRATE JUDGE Bowler

RECEIPT # 58704
AMOUNT \$150
SUMMONS ISSUED yes
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. F.O.M.
DATE 9/15/04

COMPLAINT AND JURY DEMAND
JURISDICTION AND VENUE

1. This is a civil action for federal copyright infringement under the Copyright Laws of the United States of America, 17 U.S.C. §101 *et. seq.*, federal unfair competition under the Lanham Act, 15 U.S.C. §1125(a) and unfair and deception acts under Chapter 93A of the laws of the Commonwealth of Massachusetts.
2. This Court has subject matter jurisdiction based upon 28 U.S.C. §§1332 and 1338.
3. Venue is proper in this jurisdiction disputed pursuant to 28 U.S.C. §1391.
4. The Court has supplemental jurisdiction over claims arising under the laws of the Commonwealth of Massachusetts pursuant to 28 U.S.C. §1367.

PARTIES

5. Plaintiff, DENNIS EAST INTERNATIONAL, INC. ("Dennis East"), is a corporation organized under the laws of the Commonwealth of Massachusetts with an address of 17 Shad Hole Road, Dennisport, MA 02639.
6. Dennis East is in the business of designing and creating a variety of goods and gifts for home and business use, causing said goods to be manufactured and then selling the goods to retailers for eventual resale to the public.

7. Upon information and belief, Defendant, ATHOME AMERICA, INC. ("AtHome"), is a corporation organized under the laws of the State of Illinois with an address of 5625 West 115th Street, Alsip, IL 60803, from where it operates a business similar to Dennis East including providing catalogues for distribution to the public in which assorted goods and gifts are offered for sale to the public.

BACKGROUND

8. Dennis East restates and incorporates herein by reference the allegations of Paragraphs 1-7 as though fully set forth herein.
9. Dennis East is a corporation in a business which includes creating two and three dimensional artistic works some of which are set forth in its catalogue produced annually. (Excerpts from Dennis East's 2002 catalogues are attached as Exhibit A).
10. Dennis East has obtained the following United States Copyright Registrations for certain items advertised in Exhibit A (the "Protected Designs"):
- (A) VA- applied for 2/2/04 - "Honeycomb Wire Basket" - Catalogue No. 25740
 - (B) VA 1-075-834 - "Cast Iron Fan Doorstop" - Catalogue No. 40398
 - (C) VA 1-140-462 - "Pepperberry Basket" and assorted other "Pepperberry designs"
 - (D) VA 1-075-833 - "My Leash" holder - Catalogue No. 11940
 - (E) VA 593-631 - "Bird Nest Decorative Artwork on Lamp" - Catalogue No. 13160
- Copies of all registrations are attached as Exhibit B.
11. At all times relevant to this action, Dennis East has been and is the owner of all right, title and interest in all of the United States Copyright Registrations noted in Paragraph 10.
12. On at least five (5) separate occasions between December, 2002, and March, 2003, At Home purchased significant numbers of Honeycomb Baskets (Catalog Item No. 25740CP) from Dennis East.

13. On at least thirteen (13) separate occasions between January, 2002, and April, 2003, AtHome purchased significant numbers of Cast Iron Fan Doorstop (Catalog Item No. 40398 now 99501 and 99502) from Dennis East.
14. On at least six (6) separate occasions between May, 2002, and March, 2003, AtHome purchased significant quantities of Pepperberry Wine Caddy (Catalog Item No. 81991 CP) from Dennis East.
15. On at least eighteen (18) separate occasions between January, 2001, and March, 2003, AtHome purchased significant quantities of the "My Leash" Holder (Catalog Item No. 11940 CP) from Dennis East.
16. On at least sixteen (16) separate occasions between January, 2000, and March, 2003, AtHome purchased significant quantities of the Bird Nest Lamp (Catalog Item No. 13160) from Dennis East.
17. AtHome took delivery on all purchase orders placed on these items until February, 2003.
18. In February of 2003, AtHome began to cancel certain purchase orders it had made with Dennis East including orders for several of the items referenced in Paragraphs 12-16.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT 17 U.S.C. §501

19. Dennis East restates and incorporates herein by reference the allegations of Paragraphs 1-18 though fully set forth herein.
20. Count I is an action by Dennis East against AtHome alleging Federal Copyright Infringement of Dennis East's copyrights listed in Paragraph 10.
21. All of Dennis East's copyrighted designs contain original material that is copyrighted subject matter under the Copyright Laws of the United States.
22. AtHome has advertised products for sale in its 2004 catalogue which depict Dennis East's copyrighted expressions and infringe Dennis East's copyrights. (Excerpts of AtHome's

catalogue is attached as Exhibit C.)

23. AtHome has reproduced and distributed for sale infringing products including “Honeycomb Wire Basket”, “Cast Iron Fan Doorstop”, “Pepperberry Wine Caddy”, “Pepperberry Bowl”, “My Leash” Holder and “Bird Nest Branch Lamp” (together, the “Accused Products”).
24. AtHome, through prior purchases from the Dennis East and through review of Dennis East’s catalogues, has had access to Dennis East’s copyrighted works, and the Accused Products advertised, reproduced and sold by AtHome are substantially similar to Dennis East’s copyrighted works.
25. The actions of AtHome constitute willful infringements under the Copyright Laws of the United States of America.
26. Dennis East has been damaged in an amount as yet undetermined but which is believed to exceed \$75,000 by the actions of AtHome.
27. Dennis East is entitled to an injunction restraining AtHome, its officers, agents and employees and all persons acting in concert with them from engaging in any further such acts in violation of the Copyright Laws of the United States of America.
28. Dennis East is further entitled to recover from AtHome the damages, including attorney’s fees, it has sustained and will sustain, and any gains, profits and advantages obtained by AtHome as a result of its violation of the Copyright Laws of the United States of America.

COUNT II
FEDERAL UNFAIR COMPETITION - 15 U.S.C. §1125

29. Dennis East restates and incorporates herein by reference the allegations of Paragraphs 1-28 as though fully set forth herein.
30. AtHome has violated 15 U.S.C. §1125(a) by infringing Dennis East’s trade dress in its distinctive Protected Designs.
31. AtHome conduct has been deliberate, willful and intentional.

32. AtHome's use of Dennis East's Protected Designs has damaged Dennis East in an amount yet to be determined but is believed to be well in excess of Seventy-Five Thousand Dollars (\$75,000.00).
33. By the actions alleged above, AtHome has and will continue to infringe Dennis East's trade dress.
34. Dennis East is entitled to an injunction restraining AtHome, its officers, agents and employees and all persons acting in concert with them from engaging in any further such acts in violation of the Lanham Act.
35. Dennis East is further entitled to recover from AtHome the damages, including attorney's fees, it has sustained and will sustain, and any gains, profits and advantages obtained by AtHome as a result of its violation of the Lanham Act.

COUNT III
UNFAIR OR DECEPTIVE TRADE PRACTICES IN VIOLATION OF
M.G.L. CH. 93A §2 AND 11

36. Dennis East restates and incorporates herein by reference the allegations of Paragraph 1-35 as though fully set forth herein.
37. Dennis East and AtHome are both engaged in trade or commerce.
38. As described in Count I and II, AtHome has engaged in misleading and deceptive practices by copying Dennis East's Protected Designs. Some of this conduct occurred within the Commonwealth of Massachusetts.
39. This conduct constitutes unfair and deceptive practices in violation of M.G.L. ch. 93A, §2 and 11.
40. AtHome's conduct was and is willful and knowing.
41. AtHome's conduct has caused and is causing monetary damage and/or irreparable harm to Dennis East which will continue unless enjoined by the Court.

PRAYER FOR RELIEF

Accordingly, Dennis East respectfully asks this Court to enter Judgment for Dennis East on all Counts against AtHome and to grant Dennis East the following relief:

1. An Order finding that AtHome has infringed Dennis East's copyrights in the Protected Designs.
2. An Order finding that AtHome has infringed Dennis East's trade dress under the Lanham Act.
3. An Order finding a substantial likelihood that AtHome will continue to infringe Dennis East's Protected Designs and will continue to commit unfair and deceptive practices unless enjoined by this Court from doing so.
4. An Order, preliminary ^{and} permanently, enjoining AtHome, its directors and officers, agents, servants, employees and all other persons in active concert or privity or in participation with them from making, using, offering for sale, selling, distributing, marketing, promoting or advertising any of Dennis East's Protected Designs or in any way infringing Dennis East's copyrights or trade dress or unfairly competing with Dennis East.
5. An Order directing an immediate recall, destruction and removal from AtHome's warehouses, or other storage facilities of any and all of Dennis East's Protected Designs.
6. An award of damages for Dennis East's actual damages and for any profits attributable to infringements of Dennis East's copyrights or trade dress.
7. An award for statutory damages based upon AtHome's acts of infringement pursuant to 17 U.S.C. §§101, *et. seq.*
8. An award of damages under M.G. L. ch. 93A and other applicable law for AtHome's unfair and deceptive acts or practices.

9. A three-fold increase in damages as a result of this willful, wanton, knowing and deliberate acts of infringement and unfair or deceptive practices by AtHome as authorized by 15 U.S.C. §1117(b), M.G. L. ch. 93A and other applicable law.
10. An award of Dennis East's costs incurred in this action including an award of reasonable attorney's fees under 15 U.S.C. §1117, 17 U.S.C. §505 and M.G. L. ch. 93A.
11. For any other such relief as the Court deems appropriate.

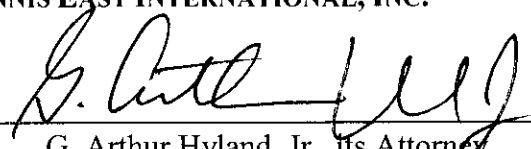
DEMAND FOR JURY TRIAL

Dennis East respectfully requests a trial by jury.

Respectfully submitted,

DENNIS EAST INTERNATIONAL, INC.


By


G. Arthur Hyland, Jr., Its Attorney

VERIFIED STATEMENT

I declare under pains and penalty of perjury that the above stated facts are true to the best of my knowledge and believe except as to those matters stated to be upon information and believe, and as to those matters, I believe them to be true.

DENNIS EAST INTERNATIONAL, INC.


Dale Endris, President